



03 MAY 2007

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In re Application of	:	
DAGENS, Beatrice et al.	:	
Application No.: 10/530,690	:	DECISION ON
PCT No.: PCT/IB2003/005041	:	
Int. Filing Date: 10 October 2003	:	PETITION
Priority Date: 15 October 2002	:	
Attorney Docket No.: AVAN/000424	:	UNDER 37 CFR 1.10(d)
For: SEMICONDUCTOR OPTICAL	:	
AMPLIFIER WITH LATERAL AND	:	
DISTRIBUTED GAIN STABILISATION :	:	

This decision is in response to applicant's "Petition to Correct Filing Date on Filing Receipt" filed on 16 August 2005 and a supplement to the petition filed on 17 April 2007. The petitions have been treated as a Petition Under 37 CFR 1.10(d).

BACKGROUND

On 10 October 2003, applicant filed international application PCT/IB2003/005041, claiming a priority date of 15 October 2002. A copy of the international application was transmitted to the Office on 29 April 2004. The deadline for entry into the national stage in the United States was thirty months from the priority date, 15 April 2005.

Applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by the basic national fee by Express Mail. The date-in on the Express Mail mailing label indicated 09 April 2005 and the papers were accorded the date-in as their receipt date.

On 03 August 2005, the Office mailed a Notification of Acceptance (Form PCT/DO/EO/903) indicating that the dates under 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4) and for all 371 requirements were 09 April 2005.

On 16 August 2005, applicant submitted a petition under 37 CFR 1.10(d) to correct the receipt 371 dates.

On 17 April 2007, applicant filed a supplemental petition.

DISCUSSION

Applicant argues that the application was submitted to the USPS on 08 April 2005. 37 CFR § 1.10(d) allows an applicant to petition to correct an incorrectly entered "Date In" of an Express Mail receipt and states that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1), (2) and (3). The petition was filed promptly and the papers in the file reflect the mailing label number. Applicant has supplied Express Mail corporate account records, track and confirm records and a USPS register receipt, all indicating a deposit date of 08 April 2005. The basic national fee was paid on 08 April 2005.

However, a review of the application file reveals that the declaration filed during the international phase is defective. The declaration was supplied to the International Bureau on 12 December 2003, under PCT Rule 26ter. However, the declaration did not list the international application number, as is required for declarations supplied after initial filing. Additionally, the continuation boxes listed the same inventors, but were separately executed. While it is acceptable for inventors to execute separate copies of the declaration, the complete declaration, as executed by the inventors must be submitted to the Office. As such, the Notification of Acceptance issued in error. An oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) is required.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.10(d) is **GRANTED**, but the request for a corrected date under 35 USC 371(c)(1), (c)(2) and (c)(4) is **DISMISSED** without prejudice.

The Notification of Acceptance (Form PCT/DO/EO/903) mailed 03 August 2005 is **VACATED**.

Applicants are required to submit an oath or declaration in compliance with 37 CFR 1.497(a)-(b) with **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in the abandonment of the application.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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